

11:10AM 1 Grand Rapids, Michigan
2 Friday, September 16, 2022
11:10AM 3 11:10 a.m.
11:10AM 4 THE CLERK: All rise, please.
11:10AM 5 The United States District Court for the Western
6 District of Michigan, the Honorable Jane M. Beckering, United
7 States District Judge, presiding.
8 All persons having business before this court draw
9 near, give attention, and you shall be heard. God save these
10 United States and this Honorable Court. This court is now in
11 session. Please, be seated.
11:11AM 12 THE COURT: Good morning, everyone.
11:11AM 13 MR. HAKES: Morning.
11:11AM 14 MS. DALZELL: Morning, Your Honor.
11:11AM 15 THE COURT: Looks like we have a relatively full
16 courtroom here with several folks on behalf of our Defense,
17 which is wonderful to see, and looks like some friends and
18 family of Mr. Booker as well.
11:11AM 19 We are here for the date and time scheduled for
11:11AM 20 sentencing in the matter of the United States of America
11:11AM 21 versus Mykael Lee Booker, Case No. 1:20-cr-189.
11:11AM 22 May I have appearances of counsel and introductions,
23 please.
11:11AM 24 MR HAKES: Good morning, Your Honor. Austin Hakes on
11:11AM 25 behalf of the United States, and with me at counsel table is

11:11AM 1 Ms. Kathryn Dalzell, who will be arguing the objection on
11:11AM 2 behalf of the Government today.

11:11AM 3 THE COURT: Okay.

11:11AM 4 Good morning.

11:11AM 5 MS. NIEUWENHUIS: And Helen Nieuwenhuis on behalf of
11:12AM 6 Mr. Booker, Your Honor. He does pronounce his name Michael,
11:12AM 7 even though it looks different.

11:12AM 8 THE COURT: Oh, and I've done that wrong before. I
11:12AM 9 apologize. Michael.

11:12AM 10 MS. NIEUWENHUIS: And I've taken my appellate
11:12AM 11 division with me, along with another attorney from our office,
11:12AM 12 James Fisher, and Jasna Tasic and Pedro Celis. I do not hold
11:12AM 13 myself out as a scientific genius by any stretch, but today I
11:12AM 14 will have Mr. Fisher make those arguments in regard to the
11:12AM 15 armed career criminal designation, Your Honor.

11:12AM 16 THE COURT: Great. Thank you.

11:12AM 17 Welcome, everyone.

11:12AM 18 All right. Well, I have spent the better part of
11:12AM 19 three days learning chemistry, organic chemistry, and
11:12AM 20 understanding what the term stereo isotope means or isomer,
11:12AM 21 and I think I have a pretty good handle on this, but enough, I
11:12AM 22 guess, to be able to discuss that today and to make some
11:12AM 23 important decisions before the Court.

11:12AM 24 In preparation for today, I've reviewed several
11:13AM 25 documents so that I can fully understand you, Mr. Booker, and

11:13AM 1 the decision that I have to make today. I've read all of the
11:13AM 2 Indictments: The Indictment, the Superseding Indictment, the
11:13AM 3 Second Superseding Indictment, and the Third Superseding
11:13AM 4 Indictment.

11:13AM 5 I read the plea agreement that was affiliated with
11:13AM 6 your second plea process in front of me. I've read the final
11:13AM 7 presentence report, the Defendant's sentencing memorandum and
11:13AM 8 the attachments to that, the Government's sentencing
11:13AM 9 memorandum and the attachments to that.

11:13AM 10 We have an order of forfeiture in this case already
11:13AM 11 situated that will enter with our judgment today. And I've
11:13AM 12 read the joint stipulation of admissibility of prior
11:13AM 13 testimony, and that is in regard to a prior case -- I want to
11:13AM 14 say *Robinson*. Yes. I read the deposition -- er, excuse me,
11:14AM 15 the testimony that was presented in front of Judge Maloney on
11:14AM 16 the same issue, the Armed Career Criminal Act, and its
11:14AM 17 applicability in a cocaine-related case of state offenses in
11:14AM 18 the matter of the *United States v. Robinson* from the Western
11:14AM 19 District of Michigan, No. 121-cr-118, and the associated
11:14AM 20 attachments and reports and other matters. We'll get to that
11:14AM 21 in a moment.

11:14AM 22 Are there any other documents either party believes
11:14AM 23 the Court should have reviewed before in preparation of
11:14AM 24 sentencing today?

11:14AM 25 MR. HAKES: I don't know if I heard the Court mention

11:14AM 1 the sentencing memoranda from both parties, but other than
11:14AM 2 that...

11:14AM 3 THE COURT: I did. Yes.

11:14AM 4 MS. NIEUWENHUIS: No, Your Honor. There was a letter
11:14AM 5 submitted on behalf of Mr. Booker, which I think turned out to
11:14AM 6 be an attachment to our sentencing memo. So I assume you did
11:15AM 7 read that.

11:15AM 8 THE COURT: An individual from the NAACP of Grand
9 Rapids?

11:15AM 10 MS. NIEUWENHUIS: Yes, that is correct.

11:15AM 11 THE COURT: Yes. Thank you. I did read that.

11:15AM 12 All right. So this case comes to us by plea of
11:15AM 13 conviction. On July 20, 2021, Mr. Booker pled guilty to
11:15AM 14 Counts 1, 2, 3, and 4 of the Superseding Indictment. I
11:15AM 15 believe that was before Judge Kent. He issued a report and
11:15AM 16 recommendation for Judge Jonker to accept that.

11:15AM 17 Judge Jonker did accept that by an order, but based
11:15AM 18 on the results of some drug testing, Mr. Booker asked for an
11:15AM 19 opportunity to withdraw his plea. There was a hearing, and
11:15AM 20 Judge Jonker allowed him to withdraw his plea as to Counts 2
11:15AM 21 and 4 of that Superseding Indictment. And then a Third
11:15AM 22 Superseding Indictment was issued, and Mr. Booker pled guilty
11:15AM 23 to Count 2 of that Third Superseding Indictment before me on
11:16AM 24 March 25, 2022, which was the subject of a plea agreement.
11:16AM 25 The first one was not.

11:16AM 1 I did accept that plea agreement on March 25th -- er,
11:16AM 2 excuse me, the plea of conviction for Count 2 of the Third
11:16AM 3 Superseding Indictment at the time of the change of plea
11:16AM 4 hearing. I reserved whether to accept the written plea
11:16AM 5 agreement, and I have reviewed that. I've read the PSR and
11:16AM 6 all of the other documents, and I do accept that written plea
11:16AM 7 agreement. I find that it is -- adequately reflects the
11:16AM 8 seriousness of the actual offense behavior, and it adequately
11:16AM 9 serves the interest of justice.

11:16AM 10 So that takes us to the presentence report. It's my
11:16AM 11 understanding the Government has no factual objections to the
11:16AM 12 presentence report.

11:16AM 13 Is that true?

11:16AM 14 MR. HAKES: Yes, Your Honor.

11:16AM 15 THE COURT: And the Defense, same?

11:16AM 16 MS. NIEUWENHUIS: That is correct, Your Honor.

11:16AM 17 THE COURT: Mr. Booker, before we talk about the
11:16AM 18 scoring, I want to ask you a few questions. Did you have a
11:16AM 19 chance to read the entire presentence report?

11:17AM 20 THE DEFENDANT: Yes, ma'am, I did.

11:17AM 21 THE COURT: And did you -- did you have an
11:17AM 22 opportunity to talk about that report with Ms. Nieuwenhuis or
11:17AM 23 other counsel?

11:17AM 24 THE DEFENDANT: Yes, ma'am, I did.

11:17AM 25 THE COURT: Do you find that factually everything in

11:17AM 1 it is accurate and complete?

11:17AM 2 THE DEFENDANT: Yes, everything except for the gang
11:17AM 3 involvement that they say that I was a part of. That was the
11:17AM 4 only thing that I objected to.

11:17AM 5 THE COURT: Oh, right. Yes. You took issue with the
11:17AM 6 statement that you belonged to -- at some point you belonged
11:17AM 7 to Bemis Brothers?

11:17AM 8 THE DEFENDANT: That and also the Black Gangster
11:17AM 9 Disciples.

11:17AM 10 THE COURT: You deny membership to either.

11:17AM 11 THE DEFENDANT: Right.

11:17AM 12 THE COURT: Okay. That wasn't clear in that PSR.
11:17AM 13 Okay. I won't consider your gang membership in sentencing.
11:17AM 14 So it's not material to me.

15 THE DEFENDANT: All right.

11:17AM 16 THE COURT: Are there any other areas in which you
11:17AM 17 find the PSR to be either inaccurate or incomplete?

11:17AM 18 THE DEFENDANT: No, ma'am. Other than my -- the
11:17AM 19 armed career thing, but, no, ma'am.

11:17AM 20 THE COURT: Do you have any questions about the PSR
11:18AM 21 at this point?

11:18AM 22 THE DEFENDANT: No, ma'am.

11:18AM 23 THE COURT: And has Ms. Nieuwenhuis and her defense
11:18AM 24 team represented you to your satisfaction to this point in
11:18AM 25 time?

11:18AM 1 THE DEFENDANT: Yes, ma'am.

11:18AM 2 THE COURT: All right.

11:18AM 3 All right. With regard to the presentence report,
11:18AM 4 it's my understanding the Government has no objection to the
11:18AM 5 scoring as set forth in that report as --

11:18AM 6 And let me acknowledge and thank Mr. Jeremy Williams,
11:18AM 7 our probation officer, for being here as well who prepared
11:18AM 8 that report.

11:18AM 9 And back to the Government.

11:18AM 10 MR. HAKES: That's correct. No objections from the
11:18AM 11 Government.

11:18AM 12 THE COURT: Now, it's my understanding that the
11:18AM 13 Defense has an objection, and that's to the armed career
11:18AM 14 criminal applicability in this case, correct?

11:18AM 15 MS. NIEUWENHUIS: That is correct, Your Honor, yes.

11:18AM 16 THE COURT: Why don't we turn to that now. And let
11:18AM 17 me tee it up. I'm going to lay the landscape down, and then
11:18AM 18 we're going to get into the heart and the meat of the coconut
11:18AM 19 as it were.

11:19AM 20 All right. So at issue is whether or not the
11:19AM 21 Chapter 4 enhancement relative to paragraph 95 of the PSR, the
11:19AM 22 Armed Career Criminal Act, which is pursuant to 18 U.S.C.
11:19AM 23 924(e), applies in this case associated with Mr. Booker's
11:19AM 24 three prior cocaine related convictions in state court. So to
11:19AM 25 dial down to whether that applies here, first we look to 4.41B

11:19AM 1 [sic]. That is the guidelines in this manual. This is how we
11:19AM 2 calculate those guidelines, and the guidelines are an advisory
11:19AM 3 recommendation for this Court to consider the proper sentence
11:19AM 4 in this case based on the number of factors in that.

11:19AM 5 So 4B1.4 is what we're looking at, and it defines
11:19AM 6 what an armed career criminal is. And it states -- really
11:20AM 7 what it does is saying if the person is an armed career
11:20AM 8 criminal how -- it tells us how to score that, and in this
11:20AM 9 case it would be 34 if we believe that Mr. Booker is an armed
10 career criminal.

11:20AM 11 So who is an armed career criminal? That's set forth
11:20AM 12 in 18 U.S.C. 924(e) -- excuse me, (e)(1), right? And it's
11:20AM 13 anyone who violates 922(g) of this title and has three
11:20AM 14 previous convictions by any court referred to in
11:20AM 15 Section 922(g) of this title for either a violent felony --
11:20AM 16 and we know Mr. Booker has a home invasion, and nobody is
11:20AM 17 contesting that that is, in fact, a violent felony -- or a
11:20AM 18 serious drug offense -- and that is where we're going to have
11:20AM 19 our discussion -- or both. They have to be committed on
11:21AM 20 different occasions from one another. That is not in contest
11:21AM 21 here. And then it talks about the consequences.

11:21AM 22 That statute also defines what a serious drug offense
11:21AM 23 is. And it states under 924(e)(2)(A)(ii), that it is an
11:21AM 24 offense under state law, which is what we're dealing with
11:21AM 25 here, involving manufacturing, distributing, or possessing

11:21AM 1 with intent to manufacture or distribute a controlled
11:21AM 2 substance as defined in Section 102 of the Controlled
11:21AM 3 Substances Act, which is 21 U.S.C. 802, for which a maximum
11:21AM 4 term of imprisonment of ten years or more is prescribed by
11:21AM 5 law.

11:21AM 6 My understanding is the issue in this case is whether
11:21AM 7 or not the statute in Michigan is broader than the federal
11:22AM 8 statute with regard to cocaine manufacturing or possession
11:22AM 9 with intent to distribute. We know under this law that
11:22AM 10 Mr. Booker is -- has been convicted of a felon in -- he is --
11:22AM 11 he's a felon, right. So 922(g) applies for him, and he was a
11:22AM 12 felon in possession of ammo, so that counts.

11:22AM 13 And then we look to the definitions of controlled
11:22AM 14 substances and what is illegal under state and federal law
11:22AM 15 with regard to cocaine. And under federal law, 21 U.S.C. 802,
11:22AM 16 it talks about what a controlled substance is. Under 21
11:22AM 17 U.S.C. 802(6), the term controlled substance means a drug or
11:23AM 18 other substance or immediate precursor included in Schedule
11:23AM 19 II, which is relevant for us, of this subchapter. All right.

11:23AM 20 So then we go to controlled subsection [sic] II.
11:23AM 21 There is state, here is state, and here is federal. So we're
11:23AM 22 getting to the heart of it. So what we're asked to evaluate
11:23AM 23 under the law is whether or not the definition of cocaine
11:23AM 24 under the state law, which is MCL 333.7401, which Mr. Booker
11:24AM 25 has been convicted of three times previously -- I have the

11:24AM 1 years, but it's not relevant at this point.

11:24AM 2 And it states that a person shall not manufacture or
11:24AM 3 possess with intent to deliver a controlled substance under
11:24AM 4 740 -- 333.7401 subsection -- paragraph 1, I should say, and
11:24AM 5 paragraph 2(a) describes that as a Schedule I or II substance
11:24AM 6 as defined in MCL 7214(a)(iv). And we go to that definition,
11:24AM 7 and we're going to talk about that in a minute.

11:24AM 8 And we talk about federal law, and federal law has
11:24AM 9 two relevant provisions that are subject to our discussion
11:25AM 10 today. And one is 21 U.S.C. 812(c) of Schedule II(a)(5),
11:25AM 11 which gives a definition of what is illegal under federal law.

11:25AM 12 Also relevant is 21 CFR 1308.12 subsection Schedule
11:25AM 13 II(b)(4)(ii), and that talks about the fact that
11:25AM 14 [¹²³I]ioflupane as of September 2015 is no longer deemed a
11:25AM 15 controlled substance federally based on its characteristics
11:25AM 16 and its nature, which leads us to the argument that I'm going
11:25AM 17 to allow the parties to weigh in on, but I want to let you
11:25AM 18 know where I am so that you can focus your argument
11:25AM 19 accordingly.

11:25AM 20 In preparation for today, as I mentioned, I read the
11:25AM 21 testimony of Dr. Denmark and Dr. Dudley. I also read the
11:26AM 22 rulings of my colleagues and one from the Eastern District. I
11:26AM 23 read Judge Jarbou's ruling in *United States of America v.*
11:26AM 24 *Diquan Lamont Carter*, Case No. 1:21-cr-03. Specifically she
11:26AM 25 ruled at the September 14, 2021, sentencing hearing on pages

11:26AM 1 20 and 21, and she deemed the definitions to be different.

11:26AM 2 She concluded that Michigan's definition of cocaine was

11:26AM 3 broader than the definition at the federal level, and so she

11:26AM 4 did not apply the Armed Career Criminal Act.

11:26AM 5 Time marched on, and the Government went and got an

11:26AM 6 expert. The prior expert was Dr. Dudley. The Government got

11:26AM 7 an expert by the name of Dr. Denmark. Both experts are

11:27AM 8 exceptionally well qualified, both of them went to MIT and

11:27AM 9 other institutions, and their testimony was exceptionally

11:27AM 10 helpful and interesting and credible; both of them.

11:27AM 11 The issue then was put in front of Judge Paul Maloney

11:27AM 12 on March 23, 2022. He had the opportunity to have in front of

11:27AM 13 him the testimony of these two experts. He listened to them,

11:27AM 14 he listened to their analysis, and he determined that

11:27AM 15 Dr. Denmark, who identified the word geometric isomer as a

11:27AM 16 term that is synonymous with stereoisomers -- and

11:27AM 17 stereoisomers is a relatively newer term. A geometric isomer

11:27AM 18 is a relatively older term. The term stereoisomer, which is

11:28AM 19 set forth in Michigan's definition, and, again, we'll get into

11:28AM 20 this, includes all eight of the isomers present in cocaine,

11:28AM 21 including the six diastereomers, and forgive me on

11:28AM 22 pronunciation.

11:28AM 23 Dr. Dudley stated that geometric isomers are limited

11:28AM 24 and that they are -- they only include -- I'm going to get the

11:28AM 25 pronunciation right. Basically, he contends that they do not

11:28AM 1 include the diastereomers -- diastereomers -- because of the
11:29AM 2 nature of what a geometric isomer is and the way it is set up
11:29AM 3 with rings and bonds, and I'm not going to dive down yet to
11:29AM 4 that. Let's go up again.

11:29AM 5 Judge Maloney found Dr. Denmark's testimony to be the
11:29AM 6 most credible on the interpretation of the vocabulary. He
11:29AM 7 applied the Armed Career Criminal Act in Mr. James Earl
11:29AM 8 Robinson's case, which is Case No. 1:21-cr-118. He did the
11:29AM 9 same thing again in *United States v. Johnson*, which was 21-
11:29AM 10 cr-34, on July 11th of 2022.

11:29AM 11 Judge Neff handled the same issue on Thursday May 12,
11:30AM 12 2022. She also dealt with the ioflupane issue, and she ruled
11:30AM 13 in *United States of America v. Idris Quintell Wilkes* that
11:30AM 14 Dr. Denmark's testimony had the greater credibility, and she
11:30AM 15 applied that Armed Career Criminal Act, and that was 1:21-cv-
11:30AM 16 [sic] 42.

11:30AM 17 Finally, and most importantly, the case that I read,
11:30AM 18 which I think covers all of the bases of the arguments of the
11:30AM 19 parties today, analyzes both issues that are pending before
11:30AM 20 the Court: The ioflupane and -- first, and then the
11:30AM 21 stereoisomer's issue second.

11:30AM 22 I'm going to let the parties argue, but in the case
11:30AM 23 of *United States v. Taylor*, Case No. 20-cr-20449, and that is
11:31AM 24 on Westlaw now, but that was entered on August 17, 2022. So
11:31AM 25 it's relatively recent. It's a very comprehensive written

11:31AM 1 opinion about the analysis of both of those issues. And I
11:31AM 2 could read it into the record, but I'm not going to. I'm
11:31AM 3 going to basically tell you that my thought process at this
11:31AM 4 time is exactly as Judge Paul Borman found in that case.

11:31AM 5 So before I go any further, I'm going to turn it over
11:31AM 6 for purposes of oral argument. The Defense has raised this
11:31AM 7 issue as to whether the Armed Career Criminal Act applies.
11:31AM 8 They've raised the two issues about the definitions and
11:31AM 9 whether Michigan is broader than federal law on cocaine and
11:31AM 10 whether ioflupane, because it's not illegal in the federal
11:32AM 11 system, is inconsistent and that Michigan is, therefore,
11:32AM 12 again, broader than the federal statute.

11:32AM 13 Mr. Fisher, would you like to make argument at this
11:32AM 14 time?

11:32AM 15 MR. FISHER: Your Honor, I believe it's the
11:32AM 16 Government's burden to prove that the enhancement applies. So
11:32AM 17 it probably would be proper for --

11:32AM 18 THE COURT: I do remember that from your debate with
11:32AM 19 Judge Maloney on who had to brief first.

11:32AM 20 MR. FISHER: I would say that Mr. Robinson's case was
11:32AM 21 about the career offender guidelines, just to be clear.

11:32AM 22 THE COURT: It was. You are correct. And I know
11:32AM 23 that you made that distinction in your brief as well. Yes.
11:32AM 24 Thank you.

11:32AM 25 Would you like to argue, then, whoever on --

11:32AM 1 MS. DALZELL: Yes, Your Honor.

11:32AM 2 THE COURT: Ms. Dalzell.

11:32AM 3 MS. DALZELL: As Your Honor indicated, the Court is
11:32AM 4 very familiar with the record here, of course, and as well as
11:32AM 5 all the prior decisions from other judges in this district and
11:32AM 6 in the Eastern District, so I will try not to be redundant. I
11:33AM 7 would note, first, that this week we have had two new
11:33AM 8 developments as well. Judge Jarbou -- Chief Judge Jarbou
11:33AM 9 heard a case called Nettles, and that is record number -- er,
11:33AM 10 Docket No. 1:21-cr-29, and that was this Wednesday. And this
11:33AM 11 is the first case that Chief Judge Jarbou has had in which
11:33AM 12 she's had testimony from both parties' experts. And in light
11:33AM 13 of that, she did change her view from the *Carter* case, and she
11:33AM 14 ruled in the Government's favor and applied the enhancement,
11:33AM 15 which in that case was career offender.

11:33AM 16 First she held that no match was required between the
11:33AM 17 state and federal schedules for the career offender
11:33AM 18 enhancement, and, in the alternative, she held that the
11:33AM 19 Michigan and federal cocaine definitions were co-extensive.

11:33AM 20 THE COURT: What was the first thing that she found
11:33AM 21 did you say?

11:33AM 22 MS. DALZELL: For the career offender enhancement
11:33AM 23 under the guidelines, there is a preliminary question of
11:34AM 24 whether there is even a match required between the state and
11:34AM 25 federal schedules.

11:34AM 1 THE COURT: I see.

11:34AM 2 MS. DALZELL: So she said, no, no match is required,
11:34AM 3 but even if there were one, in the alternative, she held that
11:34AM 4 there is a match here.

11:34AM 5 THE COURT: So kind of dicta, kind of --

11:34AM 6 MS. DALZELL: Right. Right. But to the extent we're
11:34AM 7 going to talk about *Carter*, I think that's relevant.

11:34AM 8 The other new development is just yesterday
11:34AM 9 Judge Roberts in the Eastern District also ruled for the
11:34AM 10 Government on the cocaine isomer's issue holding that the
11:34AM 11 state and federal cocaine definitions are -- reach the same
11:34AM 12 substances, and that case was *United States v. Hinds*, and the
11:34AM 13 case number is 18-cr-20533. So I would provide those updates.

11:34AM 14 As to the substance, I'll talk about geometric
11:34AM 15 isomers first. And, just very briefly, as this Court has
11:34AM 16 noted, several judges now have found the testimony of
11:35AM 17 Dr. Denmark more credible on this issue, and it makes sense.
11:35AM 18 Here, we have two, of course, well qualified experts providing
11:35AM 19 opinions. One expert's opinion is consistent with what
11:35AM 20 congress did, and that is Dr. Denmark's.

11:35AM 21 The Defense reading of geometric isomer would read
11:35AM 22 the word geometric out of the statute. As we said in our
11:35AM 23 brief, congress went out of its way to add the word geometric
11:35AM 24 for cocaine isomers, and congress obviously thought that
11:35AM 25 cocaine had geometric isomers.

11:35AM 1 The DEA, Drug Enforcement Administration, is the
11:35AM 2 administrator of the schedules, and contemporaneously with
11:36AM 3 congress's addition of the definition for isomer in 1984, in
11:36AM 4 1986 the DEA added the definition to the Code of Federal
11:36AM 5 Regulations. And in its notice of proposed rule making, it
11:36AM 6 enumerated all of the cocaine isomers that would be covered
11:36AM 7 under the terms optical or geometric that congress used, and
11:36AM 8 it, in fact, listed all six cocaine diastereomers that are in
11:36AM 9 dispute in this case.

11:36AM 10 So we know that congress thought that geometric
11:36AM 11 isomers existed for cocaine. We know that the DEA thought
11:36AM 12 that they included these six isomers that are at dispute here.
11:36AM 13 We also know that the case law in the 1980s -- we cited one of
11:36AM 14 the cases in our brief -- *Bockius* identified, I believe, eight
11:36AM 15 cocaine isomers that were at issue. Defendants at that time
11:36AM 16 were frequently raising the cocaine isomer defense, saying
11:37AM 17 "You can't prove that I was trafficking cocaine specifically.
11:37AM 18 It could have been an isomer for all anyone knows."

11:37AM 19 And we know that one of the purposes of congress's
11:37AM 20 addition of the isomer definition was to eliminate that
11:37AM 21 defense, and cases at the time show that courts understood
11:37AM 22 there to be eight cocaine isomers. So the context --

11:37AM 23 THE COURT: The experts agree, right?

11:37AM 24 MS. DALZELL: Pardon me?

11:37AM 25 THE COURT: Denmark and Dudley both agree that there

11:37AM 1 are eight.

11:37AM 2 MS. DALZELL: Yes, yes. They both agree. But that
11:37AM 3 just shows it supports Dr. Denmark's conclusion that the term
11:37AM 4 geometric isomers covers those six diastereomers, and then we
11:37AM 5 have cocaine and its optical isomer. So together the terms
11:37AM 6 optical and geometric cover all of the stereoisomers that
11:37AM 7 Michigan's statute refers to. So with all of that evidence,
11:37AM 8 Dr. Denmark's testimony is more credible in this instance.

11:38AM 9 With respect to ioflupane, I would also note, and I
11:38AM 10 -- there are so many cases. I'm forgetting whether *Clark*, the
11:38AM 11 Sixth Circuit recent decision, had been decided at the time
11:38AM 12 that Judge Borman ruled. But we now have the *Clark* decision
11:38AM 13 from the Sixth Circuit which applies a time of conviction rule
11:38AM 14 instead of a time of sentencing rule. And the Defense argues
11:38AM 15 here that that is distinguishable from this circumstance
11:38AM 16 because, of course, *Clark* involved the career offender
11:38AM 17 enhancement under the guidelines whereas this is the Armed
11:38AM 18 Career Criminal Act, but there is no meaningful distinction
11:38AM 19 between these scenarios.

11:38AM 20 And, in fact, the *Clark* decision makes clear that its
11:38AM 21 logic would apply to ACCA. The *Clark* panel, in fact, cited
11:38AM 22 the 11th Circuit's decision in *Jackson*, which reached a time
11:38AM 23 of sentencing rule for the ioflupane issue in that case. The
11:39AM 24 *Clark* panel disagreed with that showing that the *Clark* panel
11:39AM 25 would believe that its rule also applies in the ACCA context.

11:39AM 1 Of course, the *Clark* panel also cited the Supreme
11:39AM 2 Court's decision in *McNeill*, which applied a time of
11:39AM 3 conviction rule in the ACCA context specifically.

11:39AM 4 THE COURT: Here, don't we have convictions that
11:39AM 5 precede 2015 anyway; 2007, 2008, in --

11:39AM 6 MS. DALZELL: Yes. Mr. Booker had --

11:39AM 7 THE COURT: -- addition to the 2018?

11:39AM 8 MS. DALZELL: Yes. We have -- he has three cocaine
11:39AM 9 convictions. One is in 2007. One is in 2008. One is in
11:39AM 10 2018. So the ioflupane issue is a little bit different for
11:39AM 11 that 2018 conviction. I would say the Court doesn't even need
11:39AM 12 to reach that issue because even without it, he has three
11:39AM 13 prior predicates for ACCA.

14 THE COURT: Right.

11:39AM 15 MS. DALZELL: But if the Court did consider it,
11:39AM 16 Michigan separately has a statute that incorporates all of the
11:39AM 17 federal exceptions. So Michigan law would have been
11:40AM 18 co-extensive with federal with respect to ioflupane at that
11:40AM 19 time of that conviction also.

11:40AM 20 Aside from *Clark*, I think, as Judge Borman concluded,
11:40AM 21 and as other judges have concluded, including Judge Neff and
11:40AM 22 Judge Maloney, there is just no realistic probability of
11:40AM 23 prosecution based on ioflupane. There have been debates in
11:40AM 24 the case law about when exactly the realistic probability
11:40AM 25 analysis is permissible. Some cases have said it is not

11:40AM 1 permissible when the state statute is overbroad on its face.

11:40AM 2 That is not the case here.

11:40AM 3 The case here is that Michigan statute covers coca
11:40AM 4 leaves and their derivatives. And so that's not clear on its
11:40AM 5 face whether ioflupane counts because, in fact, Michigan
11:40AM 6 courts have in the past disputed how to interpret the word
11:40AM 7 derivative.

11:40AM 8 In addition, there is the statute that we cite in our
11:40AM 9 brief that allows an exemption from the schedule for
11:41AM 10 substances that have no abuse potential. So just looking at
11:41AM 11 the face of the statutes here, it is not clear facially that
11:41AM 12 Michigan's statute is overbroad, but --

11:41AM 13 THE COURT: That's 333.7214(a)(iv).

11:41AM 14 MS. DALZELL: I believe so.

11:41AM 15 THE COURT: Oh, no. I have that wrong.

11:41AM 16 MS. DALZELL: It's in our brief.

11:41AM 17 THE COURT: I know what you're talking about here.

11:41AM 18 MS. DALZELL: And I can pull that cite when I sit
11:41AM 19 back down too for the Court, if that would be helpful.

11:41AM 20 THE COURT: It's 333.7227(1).

11:41AM 21 MS. DALZELL: Yes.

11:41AM 22 THE COURT: Right.

11:41AM 23 MS. DALZELL: So I would say it's not overbroad on
11:41AM 24 its face, but even if it were overbroad on its face, courts
11:41AM 25 have also allowed the realistic probability analysis where the

11:41AM 1 thing that is supposedly overbroad about the state law is just
11:41AM 2 impossible. For example, in the Ninth Circuit *Rodriguez*
11:41AM 3 *Gamboa* case, California covered geometric isomers of meth, and
11:41AM 4 the federal schedule doesn't. The court said there is no
11:41AM 5 realistic probability based on -- of prosecution based on
11:42AM 6 geometric isomers of meth because they don't exist.

11:42AM 7 In the same way here, I would put [¹²³I] ioflupane in
11:42AM 8 the same box because it's radioactive. You need a particle
11:42AM 9 accelerator to make it. People on the street are not going to
11:42AM 10 be able to make it. Even if they could, it has a shelf life
11:42AM 11 of 24 hours, at which point it starts to fall into radioactive
11:42AM 12 decay, and it transforms into another substance that, you know
11:42AM 13 it's not any longer at that point [¹²³I] ioflupane. And, in
11:42AM 14 addition, you would need to inject such a quantity of it to
11:42AM 15 get high that that would likely kill you.

11:42AM 16 So for all of those reasons, DEA concluded
11:42AM 17 conclusively it's just not abusable. So it's not something
11:42AM 18 anyone is going to be trafficking. We can say categorically
11:42AM 19 that no Michigan prosecution has ever involved ioflupane, but,
11:42AM 20 taking a step back, *Clark* forecloses the ioflupane argument
11:43AM 21 anyway.

11:43AM 22 I believe unless the Court has further questions,
11:43AM 23 that is all I would say. But I am happy to answer any
11:43AM 24 questions that come up as this continues.

11:43AM 25 THE COURT: Thank you.

11:43AM 1 MS. DALZELL: Thank you.

11:43AM 2 THE COURT: Mr. Fisher.

11:43AM 3 MR. FISHER: Thank you, Your Honor. I think that
11:43AM 4 both parties have briefed this issue fairly thoroughly. I
11:43AM 5 would just raise a couple of points in my rebuttal.

11:43AM 6 Dr. Denmark's conclusions, I'm going to start with
11:43AM 7 those to begin with. Both experts agree that the
11:43AM 8 International Union of Pure and Applied Chemistry is the
11:43AM 9 source for chemistry nomenclature. And the real issue in this
11:43AM 10 dispute is the use of chemistry nomenclature in the federal
11:43AM 11 statutes, not in the Michigan statutes.

11:43AM 12 And the question, when we are getting into the
11:43AM 13 categorical approach analysis, is whether those statutes
11:43AM 14 align. And I think we can start from the principle first that
11:44AM 15 these statutes simply do not match on their face. There is a
11:44AM 16 difference in the terms that are used.

11:44AM 17 Michigan statutes, as the Government notes in their
11:44AM 18 brief and in their discussion, encompasses all stereoisomers
11:44AM 19 of cocaine, whereas this federal statute, for some reason,
11:44AM 20 does not. And I think the question that -- the Government's
11:44AM 21 position, Dr. Denmark's argument on this issue raises is where
11:44AM 22 did this language come from? And you can look back in the
11:44AM 23 IUPAC history of their hearings and their processes in the
11:44AM 24 decisions about how to apply this nomenclature and well prior
11:44AM 25 to the 1981 and the 1984 statutes that we're dealing with

11:44AM 1 here, these were not terms that were used in the way the
11:44AM 2 Government suggest they should be here. These are not terms
11:44AM 3 that IUPAC adopted in 1974, for example, when they talk about
11:44AM 4 cis and trans isomers and do not discuss the term geometric
11:44AM 5 isomers at all.

11:44AM 6 So we have the situation where the federal
11:45AM 7 government, for whatever reason, because people raising this
11:45AM 8 isomer objection to possession charges as a defense, adopts
11:45AM 9 this language that is incongruous with what chemists were
11:45AM 10 using at the time of the adoption of the statute, and that's
11:45AM 11 the core of this issue.

11:45AM 12 And I think when you look at what the categorical
11:45AM 13 approach requires is, let's look at the statutes. It's a
11:45AM 14 simple and straightforward approach. I know it is often
11:45AM 15 complicated and unwieldy in its execution, but when you look
11:45AM 16 at the statutes, the categorical approach tells us what does
11:45AM 17 the statute say, and these statutes say different things.
11:45AM 18 They do.

11:45AM 19 And these terms, if we look at the terms and the
11:45AM 20 definitions that were used at the time these statutes were
11:45AM 21 created, the Government cites that IUPAC's published 1996
11:45AM 22 version, you know, notes that these are antiquated terms, but
11:45AM 23 I would again turn you to the IUPAC rules for nomenclature of
11:45AM 24 organic chemistry that was published in 1974 well prior to the
11:45AM 25 1996 revisions that do not reference optical isomers or

11:45AM 1 geometric isomers in the way that Dr. Denmark relies upon in
11:46AM 2 his opinion. So this is an issue that is not at all clear to
11:46AM 3 me that this was appropriate usage at the time that congress
11:46AM 4 wrote this statute.

11:46AM 5 Then the question becomes, when we're looking at the
11:46AM 6 categorical approach analysis, do we use the facial language
11:46AM 7 of the statutes and the definitions that are incorporated in
11:46AM 8 those statutes and then stop the inquiry there, or do you look
11:46AM 9 beyond it, as the Government suggests, with this functional
11:46AM 10 approach? And I think the answer should be no because that
11:46AM 11 really in many ways violates the entire spirit of the
11:46AM 12 categorical approach.

11:46AM 13 What we're looking at is not the facts of the
11:46AM 14 underlying conviction. The Court is not asking if in one of
11:46AM 15 these previous convictions if Mr. Booker was possessing
11:46AM 16 ioflupane or not. The Court is looking at what the elements
11:46AM 17 of the law are. And I think that is where we differ in terms
11:46AM 18 of our opinions about how the Court should understand the
11:46AM 19 analysis here under the categorical approach and the
11:46AM 20 terminology and the nomenclature that chemists have used and
11:46AM 21 then for some reason congress adopted even though at the same
11:47AM 22 time Michigan contemporaneously was using different terms to
11:47AM 23 describe the same things, and that contrast, I think, is what
11:47AM 24 is warranted -- you know, the rule of lenity applying to this
11:47AM 25 case in Mr. Booker's favor. Thank you.

1 THE COURT: Thank you.

11:47AM 2 MR. FISHER: Any questions?

11:47AM 3 THE COURT: I'll try -- I don't have any questions.

11:47AM 4 MR. FISHER: All right.

11:47AM 5 THE COURT: Thank you.

11:47AM 6 MR. FISHER: All right.

11:47AM 7 THE COURT: I'll try to be as clear and concise as I
11:47AM 8 can in my ruling to this. With regard to the applicability --
11:47AM 9 hang on a minute here. All right. With regard to the
11:47AM 10 applicability of the Armed Career Criminal Act, I do find that
11:48AM 11 it is applicable here. The two issues that have been raised
11:48AM 12 by the Court is whether or not the -- sorry. I've moved
11:48AM 13 everything around. Hang on a minute here. Just a minute.

11:48AM 14 The issue is whether or not for a serious drug
11:48AM 15 offense the two definitions in federal and state law, although
11:49AM 16 they may use different words and one would argue that a
11:49AM 17 categorical approach of element by element would have them be
11:49AM 18 different. I agree with the analysis by predecessors on this
11:49AM 19 issue, including Judge Borman, and citing to other cases that
11:49AM 20 in a situation in which a state statute is divisible when it
11:49AM 21 includes multiple ways in which one can be convicted of the
11:49AM 22 same statute when there are alternative elements, one uses a
11:49AM 23 modified categorical approach.

11:49AM 24 And so we take a look at the definitions of -- the
11:49AM 25 federal definition of cocaine. We take a look at the state

11:49AM 1 definition of cocaine. And if I were to conclude that the
11:49AM 2 word geometric isomers is not the same thing as stereoisomers,
11:49AM 3 I would conclude that the Michigan statute is broader than the
11:49AM 4 federal statute, and I would not apply it. But having looked
11:50AM 5 at the analysis by Dr. Denmark and Dr. Dudley about the
11:50AM 6 evolution of terms in science in stereochemistry, they agree
11:50AM 7 that the word stereoisomers includes all eight stereoisomers
11:50AM 8 of cocaine because Michigan says it includes stereoisomers.
11:50AM 9 So that covers everything in cocaine, right, and so what
11:50AM 10 you're looking at is R-cocaine, cocaine, S-cocaine, cocaine
11:50AM 11 enantiomers, and then the six diastereomers. An enantiomer is
11:50AM 12 the optical mirror, right, so that's S-cocaine. And then you
11:50AM 13 have these six diastereomers: Pseudococaine, R-pseudococaine,
11:51AM 14 S-pseudococaine, R-allocaine [sic], S-allocaine [sic],
11:51AM 15 R-pseudoallococaine and R-allopseudococaine.

11:51AM 16 So Michigan includes all those. And the issue is
11:51AM 17 does the federal laws -- we know it includes cocaine in the
11:51AM 18 federal law statute. We know it includes the optical isomer,
11:51AM 19 the antiomer, but the issue is, does the word geometric isomer
11:51AM 20 include the six diastereoisomers that I just identified?

11:51AM 21 And, according to Dr. Dudley -- er, excuse me, to
11:51AM 22 Dr. Denmark in the past geometric was used to refer more
11:51AM 23 narrowly to cis-trans isomers. That's true, right, and that's
11:51AM 24 what Dr. Dudley talks about, and he refers to that in the
11:52AM 25 IUPAC Gold Book. And Dr. Dudley says it's an older and

11:52AM 1 obsolete term for a subset of diastereomers called cis-trans
11:52AM 2 isomers, but Dr. Denmark says that that is no longer the
11:52AM 3 prevailing understanding. And he describes that it's now
11:52AM 4 understood to be synonymous with diastereomers of any isomer
11:52AM 5 other than the optical mirror image. That it's the isomers
11:52AM 6 that share -- the stereoisomers that share the same
11:52AM 7 connectivity but have atoms arranged differently in space, and
11:52AM 8 he talked about the bonds and the rings. And that even though
11:52AM 9 there may be more than two which was set forth typically in
11:52AM 10 your cis-trans opposite sides, it's now referred more broadly
11:52AM 11 to any time you have those same arrangements, but you can just
11:52AM 12 identify more specifically the cis and the trans that
11:53AM 13 differentiate those stereoisomers or isomers from one another.

11:53AM 14 The pages in which I found helpful from the testimony
11:53AM 15 -- well, I won't get into it, but Dr. Denmark describes why
11:53AM 16 those are the same. He also argues -- when Lauren Biksacky
11:53AM 17 asks -- the Government's attorney -- "Even if your definition
11:53AM 18 applies as it's meant for cis-trans stereomers [sic] only --
11:53AM 19 er, isomers only, would they this apply in this case?"

11:53AM 20 And doctor -- both doctors said yes, right? It would
11:53AM 21 apply given the nature of cocaine. It would apply to cocaine.
11:53AM 22 And if one were to apply Dr. Denmark's definition, the word
11:53AM 23 geometric isomers would mean nothing in the world of cocaine
11:54AM 24 because there is no such composition of the cis-trans
11:54AM 25 description in cocaine. So it would render the statute with

11:54AM 1 regard to cocaine nonsensical, and that's not consistent with
11:54AM 2 the 1984 congress passing these regulations and trying to
11:54AM 3 include additional definitions of cocaine in order to capture
11:54AM 4 and avoid these -- these semantics.

11:54AM 5 So I agree with Dr. Denmark and his analysis. And I
11:54AM 6 find it's reasonable under these circumstances. And I adopt
11:54AM 7 as my deeper analysis that which was set forth by Dr. Bor --
11:54AM 8 -- er, Judge Borman in *United States v. Taylor*, 20-cr20449.

11:54AM 9 With regard to [¹²³I] ioflupane, I don't think it's
11:54AM 10 necessary to address here. Mr. Booker had two offenses that
11:55AM 11 predate the ioflupane change pre-2015 and a home invasion. So
11:55AM 12 it would count either way. But I also agree with
11:55AM 13 Judge Borman's analysis on ioflupane, specifically the fact
11:55AM 14 that under the realistic probability analysis that had not
11:55AM 15 been applied in some prior cases, it would never be prosecuted
11:55AM 16 or could be prosecuted in the state of Michigan. It would be
11:55AM 17 impossible for the reasons that Ms. Dalzell talked about, and
11:55AM 18 there are six of them listed in the opinion by Judge Borman
11:55AM 19 that makes that a realistic improbability impossibility.

11:55AM 20 That's a long way of saying that I believe that the
11:55AM 21 Armed Career Criminal Act, with respect to Mr. Booker's prior
11:55AM 22 Michigan cocaine delivery cases or possession with intent to
11:56AM 23 deliver, apply here.

11:56AM 24 Are there any remarks that counsel wish to make at
11:56AM 25 this time on that topic?

11:56AM 1 MR. HAKES: None from the Government, Your Honor.

11:56AM 2 MS. NIEUWENHUIS: No, Your Honor. Thank you.

11:56AM 3 THE COURT: Thank you for tolerating my very less
11:56AM 4 than articulate analysis there, but that's where it is.

11:56AM 5 So that takes us back to the sentencing. All right.
11:57AM 6 I'm going to calculate the offense level. We're going to deal
11:57AM 7 with the offense level calculation and the criminal history
11:57AM 8 category, which helps us ascertain the appropriate guidelines
11:57AM 9 sentence recommendation in this case.

11:58AM 10 I agree with the analysis on page 22 of the
11:58AM 11 presentence report, specifically paragraphs 88 through 99,
11:58AM 12 with regard to the Count 1 group of these three offenses. The
11:58AM 13 base offense normally would be level 20, but because of the
11:58AM 14 Chapter 4 enhancement that we've been talking about, pursuant
11:58AM 15 to 18 U.S.C. 924(e), we have to go right to 34, right? And
11:58AM 16 that is USSG 4B1.4(b)(3)(A). So instead of the 20 and going
11:58AM 17 down to 17, if we were to do acceptance of responsibility on this
11:58AM 18 the third level, we go to 34 in the guidelines scoring.

11:58AM 19 Then with regard to acceptance of responsibility --
11:58AM 20 so we're starting with 34. I do find that acceptance of
11:59AM 21 responsibility applies, and that takes us down to 32.

11:59AM 22 Does the Government move for the third level of
11:59AM 23 acceptance of responsibility?

11:59AM 24 MR. HAKES: It does, Your Honor.

11:59AM 25 THE COURT: All right. So that takes us down to an

11:59AM 1 offense level of 31. With regard to the criminal history
11:59AM 2 category, I also agree with the presentence report's analysis
11:59AM 3 that there are eight points under the subtotal of the criminal
11:59AM 4 history score based on Mr. Booker's prior convictions. Two
11:59AM 5 points are added because he committed the instant offense
11:59AM 6 while under a criminal justice sentence for delivery of --
11:59AM 7 manufacturing less than 50 grams. So that's an additional two
11:59AM 8 points.

11:59AM 9 So the criminal history category score is ten, which
11:59AM 10 would normally be a Chapter V criminal history category, but
11:59AM 11 because Mr. Booker is an armed career criminal, we -- we have
11:59AM 12 to use the greatest criminal history category applicable under
12:00PM 13 the guidelines, which is category VI. So with those two
12:00PM 14 findings, offense level of 31 and a criminal history category
12:00PM 15 of VI, the guidelines under the guidelines manual is
12:00PM 16 188 months to 235 months.

12:00PM 17 With regard to the range that this Court could
12:00PM 18 sentence today, the max -- excuse me, the minimum term of
12:00PM 19 imprisonment under Count 1 is five years and the maximum is
12:00PM 20 40. For Count 2, the maximum term is 20 years; and for
12:00PM 21 Count 3, the minimum term is 15 years; and the maximum term is
12:00PM 22 life. The guidelines, as I mentioned, is 188 to 235 months.

12:00PM 23 With regard to supervised release under Count 1, it's
12:00PM 24 a minimum of four years for supervised release; with regard to
12:01PM 25 Count 2, it's a minimum term of at least three years; and with

12:01PM 1 regard to Count 3, it's a maximum term of not greater than
12:01PM 2 five years. And I would impose -- whatever I decide I would
12:01PM 3 impose those concurrently, so they overlap. It would not be
12:01PM 4 consecutive.

12:01PM 5 The guidelines provisions put Count 1 at two to
12:01PM 6 five years, Count 2 at three years, and Count 3 of two to
12:01PM 7 five years. I think -- actually, I think that's wrong. The
12:01PM 8 guidelines, I think it should be four to five years for
12:01PM 9 Count 2 -- er, Count 1, excuse me, because it's a minimum of
12:01PM 10 four. It says on paragraph 162, two to four years -- two to
12:01PM 11 five years, but I think it's four to five years.

12:01PM 12 With regard to probation, by statute Mr. Booker is
12:02PM 13 not applicable here and by guidelines as well.

12:02PM 14 With regard to fines, with regard to Count 1, the
12:02PM 15 maximum fine is 5 million. Count 2, a million. Count 3,
12:02PM 16 \$250,000. And so the guideline range for the fine in these
12:02PM 17 group convictions is 30,000 to \$6 million.

12:02PM 18 Mandatorily, there is a special assessment of \$100
12:02PM 19 for every count of convictions, and that's three here. So
12:02PM 20 that would be \$300. Restitution is not applicable here.

12:02PM 21 I don't see any applicable departures either, and so
12:02PM 22 that brings us to allocution.

12:02PM 23 Ms. Nieuwenhuis, would you like to make some remarks?

12:02PM 24 MS. NIEUWENHUIS: Yes, Your Honor. I'll have
12:03PM 25 Mr. Booker come up as well.

12:03PM 1 THE COURT: Sure.

12:03PM 2 MS. NIEUWENHUIS: Your Honor, although the Court has
12:03PM 3 ruled against us regarding the armed career criminal status, I
12:03PM 4 do want to thank the Court for taking all the time. I know
12:03PM 5 digging through this was probably not your most enjoyable
12:03PM 6 time.

12:03PM 7 I do want to really talk about who the Court is
12:03PM 8 sentencing here today. I've been with this case now for
12:03PM 9 almost two years. It has a very long history. I've gotten to
12:03PM 10 know Mr. Booker very well. We've had many conversations. And
12:03PM 11 I am asking the Court -- I know the Court's hands are tied as
12:04PM 12 far as the mandatory minimum here is 15 years, and I think
12:04PM 13 15 years is more than sufficient for Mr. Booker under all the
12:04PM 14 facts and circumstances of this case and the facts and
12:04PM 15 circumstances of Mr. Booker personally.

12:04PM 16 I'd like to point out Mr. Booker has been
12:04PM 17 incarcerated at the Newaygo County Jail since November 22nd of
12:04PM 18 2020. He's been there almost going on two years. It's
12:04PM 19 incredible in my opinion that he's had no write-ups.

12:04PM 20 He's had no issues at the jail. He's had the stress,
12:04PM 21 of course, of this kind of time hanging over his head and all
12:04PM 22 the kind of valleys and peaks that we've gone through in this
12:04PM 23 case. And I am asking the Court to take that into
12:04PM 24 consideration because I have many clients who really aren't
12:04PM 25 capable of doing a few months there and run into issues. And

12:05PM 1 so I am asking the Court to take a look at that along with all
12:05PM 2 of the other things that I'd like to address today.

12:05PM 3 Mr. Booker is thirty-three. He has two children, who
12:05PM 4 he is close to. He was very close to his stepfather, Barth
12:05PM 5 Matthews, who very unfortunately passed away when Mr. Booker
12:05PM 6 was young. And then he got involved with the codefendant,
12:05PM 7 Mr. Johnson, who really was like a stepfather to him. And I
12:05PM 8 know that although the Court must give 15 years on this case,
12:05PM 9 I do want the Court taking a look at, so we do not have a
12:05PM 10 disparity in sentencing, Mr. Johnson was sentenced to ten
12:05PM 11 years, which I believe was his mandatory minimum on his case.
12:06PM 12 And he really had a pivotal role in Mr. Booker's personal life
12:06PM 13 as well as being a codefendant in this case.

12:06PM 14 And I think the presentence report, I think,
12:06PM 15 carefully laid out Mr. Johnson's involvement in this case.
12:06PM 16 And I think that when we look at it, Mr. Booker's involvement
12:06PM 17 was a very short period of time comparatively to the other
12:06PM 18 codefendants. I believe it comes to a little less than
12:06PM 19 approximately, I would say, two months.

12:06PM 20 And he really was a courier. He was a courier
12:06PM 21 between Mr. Cartwright and Mr. Johnson, who, as I pointed out,
12:06PM 22 was his stepfather. And I am asking the Court to also take
12:06PM 23 that into consideration. I think it's pretty clear from the
12:06PM 24 facts of the case that Mr. Booker did not really receive
12:07PM 25 payment or anything else in regards to being a courier under

12:07PM 1 this scenario. He bought himself 15 years. That is true.

12:07PM 2 He very unfortunately, in my opinion knowing
12:07PM 3 everything I know about this case, I really believe that
12:07PM 4 Mr. Booker got involved and really couldn't get out. And that
12:07PM 5 although, admittedly, he has a prior record, I think if we
12:07PM 6 look very strongly at that prior record, especially the older
12:07PM 7 cases of the -- what's listed as drug dealing or deliveries,
12:07PM 8 those were very small amounts, and they took place a long time
12:07PM 9 ago; 2007, 2008, and even his sentences I think in the state
12:07PM 10 court reflected that.

12:07PM 11 He did not go to prison on those cases, and I'm glad
12:07PM 12 for Mr. Booker that he did not, but when he stands here today
12:08PM 13 the terrific enhancement of his penalties compared to what the
12:08PM 14 true guidelines under this scenario would be are almost
12:08PM 15 astounding. And so I am asking the Court to sentence him to
12:08PM 16 the mandatory minimum that we recognize the Court must do
12:08PM 17 under this scenario.

12:08PM 18 There is one other thing I would like to address, and
12:08PM 19 that is the Government points out this conversation and that
12:08PM 20 Mr. Booker allegedly, according to them, was going out to kill
12:08PM 21 somebody and get this gun in conjunction with that. There
12:08PM 22 were many things said in this case and many things done in
12:08PM 23 this case that the Government believed or thought to be the
12:08PM 24 case that turned out was not the case.

12:08PM 25 And in this case, I can only say that I think

12:09PM 1 Mr. Booker's commentary really was meant for some other people
12:09PM 2 in the case so that people would know that he was armed. And
12:09PM 3 that's really all I want to say further about that. But I am
12:09PM 4 asking the Court to take a more jaundice look, I guess, at
12:09PM 5 that version of supposedly what that really means. I think in
12:09PM 6 the context, it does not mean that.

12:09PM 7 Looking specifically, again, at Mr. Booker himself,
12:09PM 8 he does have a learning disability. He had special education
12:09PM 9 when he went to school. He did earn a high school diploma in
12:09PM 10 spite of that, and we are asking the Court to take all of
12:09PM 11 these things into consideration.

12:09PM 12 I mean, clearly he can't get a minor role, but I
12:09PM 13 think there could have been some arguments without the armed
12:09PM 14 career criminal designation that I think his involvement in
12:10PM 15 the case was less than some. And to think that Mr. Johnson is
12:10PM 16 doing five years less than what Mr. Booker has to do, I really
12:10PM 17 do think that disparity argument is really at play and should
12:10PM 18 be looked at by the Court.

12:10PM 19 We are asking for the recommendations that are laid
12:10PM 20 out in the sentencing memorandum. He's very interested in
12:10PM 21 culinary, welding, vocational skills. He also needs a
12:10PM 22 physical. He's had some issues with his lung. And today in
12:10PM 23 speaking with him, I know that he and I had talked before
12:10PM 24 about the potential of the RDAP program. And I know that
12:10PM 25 currently he probably would not get the special good time

12:10PM 1 involved in RDAP, but I really think Mr. Booker would be an
12:10PM 2 excellent candidate for RDAP.

12:10PM 3 And if it changes, then he gets credit, that's great,
12:11PM 4 but if not, I think the real force behind the RDAP program is
12:11PM 5 really made for somebody like Mr. Booker to turn his life
12:11PM 6 around. He knows he has to do it, he wants to do it, and I
12:11PM 7 think with help he can do it. He's not just this person that
12:11PM 8 we see in his criminal history category. I can assure the
12:11PM 9 Court of that. And unless the Court had any questions, I
12:11PM 10 think that was what I wanted to say, Your Honor.

12:11PM 11 THE COURT: Thank you.

12:11PM 12 Mr. Booker.

12:11PM 13 THE DEFENDANT: I just want to take full
12:11PM 14 responsibility for my actions, and I feel like I let my family
12:11PM 15 down, and I'm sorry to continue to contribute to the drug
12:11PM 16 problem in my community. I feel like I let -- I followed the
12:12PM 17 wrong role models, and I just -- I made a terrible mistake,
12:12PM 18 and I just want a chance to be able to turn around and fix the
12:12PM 19 people in my family below me, and hopefully they don't have to
12:12PM 20 go through the same thing I went through. I just want to say
12:12PM 21 I apologize and ask that the Court to have some mercy on me.
12:12PM 22 That's all.

12:12PM 23 THE COURT: Thank you.

12:12PM 24 Government.

12:12PM 25 MR. HAKES: Your Honor, I submit to the Court that

12:12PM 1 while Mr. Booker may have been courier in this drug
12:12PM 2 conspiracy, he was also the wild card, and he deserves to be
12:12PM 3 treated accordingly.

12:12PM 4 It is certainly to his credit that since being
12:13PM 5 charged in this case, he did plead guilty and did accept
12:13PM 6 responsibility and has conducted himself appropriately while
12:13PM 7 awaiting sentencing, which he's been waiting for a long time,
12:13PM 8 and so this isn't just a couple of months of good behavior.

12:13PM 9 Certainly the Court should consider that he has shown
12:13PM 10 -- demonstrated commitment to good behavior while incarcerated
12:13PM 11 for a quite lengthy period before arriving at this day. But
12:13PM 12 he is -- he's already received credit for that in the way that
12:13PM 13 his guidelines have been changed. The drop of three levels
12:13PM 14 from where he was otherwise -- would otherwise be scored is
12:13PM 15 significant. It's a significant benefit that is appropriately
12:13PM 16 accrued to him. His range --

12:13PM 17 THE COURT: That applies to his acceptance of
12:13PM 18 responsibility, not the fact that he's had good behavior while
12:13PM 19 incarcerated?

12:13PM 20 MR. HAKES: I think it does weigh towards obviously
12:13PM 21 the first thing acceptance of responsibility, but to be
12:13PM 22 eligible for those points, one cannot engage in obstructive
12:14PM 23 behavior --

12:14PM 24 THE COURT: True.

12:14PM 25 MR. HAKES: -- in order to qualify for them. So I

12:14PM 1 submit to the Court that they're really incorporated within
12:14PM 2 that. And also we expect people to, you know, follow the
12:14PM 3 rules once they're locked up. And so to the extent that we
12:14PM 4 would try to give even credit beyond acceptance of
12:14PM 5 responsibility for someone who's done what should be the
12:14PM 6 baseline of behavior, I think that would, you know, pervert
12:14PM 7 the incentives and the expectations that we want to have when
12:14PM 8 people enter an incarcerated environment.

12:14PM 9 His guidelines without that acceptance of
12:14PM 10 responsibility credit would have been 262 months to
12:14PM 11 327 months. And so the drop now in the guidelines where the
12:14PM 12 upper end is at 235, while that is still a very significant
12:14PM 13 number, is also significantly lower by a matter of years than
12:14PM 14 he would otherwise have been. And I submit that that is
12:14PM 15 sufficient to account for the positive factors that Defense
12:14PM 16 Counsel correctly identify to the Court in allocution moments
12:15PM 17 ago and which are laid out in the PSR.

12:15PM 18 But it's important to consider the history and
12:15PM 19 characteristics of this Defendant and the importance of
12:15PM 20 protecting the public from him. That is one of the 3553(a)
12:15PM 21 considerations that this Court must incorporate in crafting an
12:15PM 22 appropriate sentence here.

12:15PM 23 There are not many things that trip a wire. So in
12:15PM 24 Title III investigations, the phrase "trip the wire" means an
12:15PM 25 event so significant that it forces investigators to stop

12:15PM 1 listening and start intervening now even though that will
12:15PM 2 likely expose the investigative apparatus that has taken
12:15PM 3 months to put in place. But someone driving around bragging
12:15PM 4 about being armed, speaking disparagingly about someone who
12:15PM 5 apparently owes a drug debt was enough to prompt investigators
12:15PM 6 in this case to give their full attention to apprehending
12:15PM 7 Mr. Booker that day, and that speaks to the seriousness of
12:16PM 8 what he was up to.

12:16PM 9 Even on the theory that his words were just meant as
12:16PM 10 puffing or projection to let somebody else know in the
12:16PM 11 conspiracy that he was armed, what he is doing is making a
12:16PM 12 concerted effort to let other drug dealers involved in his
12:16PM 13 illegal activities know that he is armed with a deadly weapon.
12:16PM 14 And the projection of deadly violence in the context of a
12:16PM 15 deadly drug trade is about the worst combination of criminal
12:16PM 16 activity you can see in the law.

12:16PM 17 Now, it is, of course, important that the Court avoid
12:16PM 18 sentencing disparities, I agree, but not all differences in
12:16PM 19 sentencing amount to a disparity. It certainly accords with
12:16PM 20 the 3553(a) factors and general notion of justice, but
12:16PM 21 different people and different crimes should be treated
12:17PM 22 differently.

12:17PM 23 And Mr. Booker has a unique and significant criminal
12:17PM 24 history. Three prior delivery/manufacture convictions, a home
12:17PM 25 invasion conviction as well. That is a record that sends the

12:17PM 1 clear signal this is somebody who will not comport himself to
12:17PM 2 what the law requires him to do.

12:17PM 3 And beyond that, unlike Mr. Johnson in this case, he
12:17PM 4 was caught with ammunition in circumstances that made pretty
12:17PM 5 clear to investigators and which are described in the PSR in
12:17PM 6 paragraphs 58 through 60 that show that he was hiding guns or
12:17PM 7 getting guns out of his possession while police were on the
12:17PM 8 way to capture him.

12:17PM 9 So while drug dealing is awful, it's serious and
12:17PM 10 unfortunately deadly at times, even worse is the possession of
12:17PM 11 deadly weapons in that context. And while Mr. Booker's role
12:17PM 12 within this conspiracy may have been lesser in terms of his
12:17PM 13 role within the drug business, the fact that he was armed and
12:18PM 14 ready to hurt somebody else suggests that he should be treated
12:18PM 15 differently than those who didn't have that conviction in the
12:18PM 16 way that their cases were resolved.

12:18PM 17 And in view of all of that, Your Honor, I do not see
12:18PM 18 a reason for an upward variance in this case. But I submit to
12:18PM 19 the Court that a sentence at the upper end of the advisory
12:18PM 20 guideline range is appropriate and necessary to account for
12:18PM 21 the full picture of who Mr. Booker is based on his previous
12:18PM 22 convictions and what his role was in this case. Thank you,
12:18PM 23 Your Honor.

12:18PM 24 THE COURT: Thank you.

12:18PM 25 This is a tough case because the arguments that have

12:18PM 1 been made by both parties are valid. They're both valid. My
12:18PM 2 impression is that Mr. Booker was on a very bad course in
12:18PM 3 following, as you said so yourself, Mr. Booker, choosing the
12:18PM 4 wrong role models, but I'm dealing with a long period of
12:18PM 5 incarceration, mandatorily, and deciding what is sufficient
12:19PM 6 but not greater than necessary. That's a lot of time at the
12:19PM 7 base level.

12:19PM 8 So the Court's duty is to impose a sentence that is
12:19PM 9 sufficient but not greater than necessary to comply with the
12:19PM 10 purposes of sentencing set forth in 18 U.S.C. 3553. These
12:19PM 11 guidelines, this 188 to 235 months, the Court starts with that
12:19PM 12 as an initial benchmark or starting point. Then it has to
12:19PM 13 make an individualized assessment based on the facts
12:19PM 14 presented. It's one of an array of factors that the Court has
12:19PM 15 to consider, and I recognize my discretion in determining an
12:19PM 16 appropriate sentence as recognized by the Supreme Court in its
12:19PM 17 decisions in *Booker*, *Kimbrough*, *Gall*, *Rita*, *Spears*, and the
12:19PM 18 Sixth Circuit case of *Herrera-Zuniga*.

12:19PM 19 I also recognize, pursuant to *Tapia v. U.S.*, that
12:20PM 20 imprisonment is not suitable for the purpose of promoting
12:20PM 21 correction and rehabilitation.

12:20PM 22 So taking into account the Defendant's request for a
12:20PM 23 lower sentence, I looked at this, this case specifically and
12:20PM 24 the elements that I have to take into account, the nature and
12:20PM 25 circumstances of the offense, the history and characteristics

12:20PM 1 of Mr. Booker, the seriousness of the offense, the need to
12:20PM 2 promote respect for the law, the need to provide just
12:20PM 3 punishment for the offense, to afford adequate deterrence to
12:20PM 4 criminal conduct in general, and to protect the public from
12:20PM 5 further crimes of the Defendant.

12:20PM 6 And also I can incorporate among that additionally
12:20PM 7 needed medical and educational, correctional treatment, but
12:20PM 8 not solely that. And there is a need to avoid unwanted
12:20PM 9 sentencing disparity among similarly situated Defendants.

12:21PM 10 And, as Mr. Hakes stated in this case, the math of
12:21PM 11 the conduct that has gone before this -- these crimes for
12:21PM 12 Mr. Booker put him in the category where he is, and so that
12:21PM 13 puts us in that range of 188 to 235 months.

12:21PM 14 When fashioning a sentence, I look at the fact that
12:21PM 15 Mr. Booker was clearly the middle man. I saw the trial of
12:21PM 16 Mr. Cartwright. I saw the videos and the delivery trips and
12:21PM 17 the gun and the money, right? And I know that Mr. Johnson was
12:21PM 18 dating Mr. Booker's mother and became somewhat of a role model
12:21PM 19 to him.

12:21PM 20 And, as Mr. Booker said, he was following role models
12:21PM 21 when he's got this mother who is troubled by the course of
12:21PM 22 conduct of Mr. Booker and doesn't want him to have taken the
12:21PM 23 path that he did. But he took that path, and he took that
12:21PM 24 path back at the age of eighteen in 2007 with his first CCW,
12:22PM 25 and then we've got three prior cocaine convictions and a home

12:22PM 1 invasion of a stranger.

12:22PM 2 Those are significant convictions. Even if they're
12:22PM 3 small amounts, they're significant convictions. And there is
12:22PM 4 other driving without a license, false reporting, refusing a
12:22PM 5 lawful order. I'm not even going to comment on marijuana, but
12:22PM 6 additional operating without a license and reckless driving.

12:22PM 7 But what's troubling to me is the number of times
12:22PM 8 Mr. Booker went AWOL, the times that he didn't report after
12:22PM 9 getting caught for these legal offenses, having an inability
12:22PM 10 to comply with the law. That's problematic. What I want to
12:22PM 11 see is what is sufficient, but not greater than necessary, and
12:22PM 12 I take into account the ability of the individual to be
12:22PM 13 rehabilitated and to accord their conduct and to show an
12:22PM 14 element of that.

12:22PM 15 What I can tell is that Mr. Booker has family
12:23PM 16 support. What I can tell is that people care about him, and
12:23PM 17 they want him -- hopefully they want him to follow the law and
12:23PM 18 to set a path going forward that is a better life.

12:23PM 19 And I know I have to give you 15 years to give you an
12:23PM 20 opportunity to do that. And the question is, do I give you
12:23PM 21 15 years, or do I give you more, right? So what else am I
12:23PM 22 looking at?

12:23PM 23 We know that Mr. Booker was willing to use both guns
12:23PM 24 and ammunition in furtherance of drug dealing. And as
12:23PM 25 Mr. Hakes said, for the Government, that's a dangerous

12:23PM 1 combination. And whether it was truly an intent of Mr. Booker
12:23PM 2 on those audio tapes to shoot someone or to project the danger
12:23PM 3 associated with collecting a drug debt, those are dangerous
12:23PM 4 circumstances. And so it's easy to conclude this was a very
12:23PM 5 dangerous situation that caused the police to intervene when
12:24PM 6 they did.

12:24PM 7 I've mentioned the history and characteristics of
12:24PM 8 Mr. Booker. He's got four siblings with no known criminal
12:24PM 9 history, right? So really great role models there. He has a
12:24PM 10 strong mother, a wonderful influence there. That has not --
12:24PM 11 has yet impacted Mr. Booker's behavior. I hope that changes,
12:24PM 12 right?

12:24PM 13 A limited history of legitimate employment, which
12:24PM 14 looks like then this was your chosen avocation, right? That's
12:24PM 15 got to change going forward. That's got to change. But you
12:24PM 16 have expressed remorse. You've expressed the fact that you
12:24PM 17 were following the wrong role models, right? You've
12:24PM 18 apologized for not putting your family first. You've got two
12:24PM 19 children, right? I know you want to be with those kids. I
12:24PM 20 know you want to be a good influence for them.

12:24PM 21 And I did take into account who your role models
12:24PM 22 were, right? One was dating your mother after your stepfather
12:25PM 23 passed away. I've taken into account your prior criminal
12:25PM 24 history. And in my -- in my sentence I have to reflect the
12:25PM 25 seriousness, which I think the minimum does. I have to

12:25PM 1 promote respect for the law, which 15 years does. I have to,
12:25PM 2 you know -- and then with regard to that, I need to -- for
12:25PM 3 you, I need to promote that, right?

12:25PM 4 You've been a lifelong drug dealer. You've engaged
12:25PM 5 in home invasion. Illegally possessed ammo when you knew
12:25PM 6 illegally you were not supposed -- er, legally you were not
12:25PM 7 supposed to. So there has been symptoms of inability to
12:25PM 8 conform with the law. So my sentence has to hopefully change
12:25PM 9 that for you.

12:25PM 10 I have to provide just punishment for this case, just
12:25PM 11 as we do for all others, and that's where those guidelines do
12:25PM 12 come in, and to deter criminal conduct by other people, right?
12:25PM 13 We have to impose penalty to protect others, to stop this, and
12:26PM 14 to stop you, hopefully, while you're getting on the path to
12:26PM 15 change.

12:26PM 16 So what am I going to do? Correct me if I'm wrong,
12:26PM 17 but is the mandatory minimum 180 months, Mr. Hakes?

12:26PM 18 MR. HAKES: That's correct, Your Honor.

12:26PM 19 THE COURT: So I've given thought as to really where
12:26PM 20 to be on this. And I feel like 180 months is not much
12:26PM 21 different than 188 months. Could I go above that? Yes, but
12:26PM 22 we're talking 15 years. 15 years; that's a long time.

12:26PM 23 If you're not going to be rehabilitated in that, I
12:26PM 24 don't know how you will be. I don't think another eight
12:26PM 25 months is going to do it or another two years is going to do

12:26PM 1 it.

12:26PM 2 So I'm going to -- pursuant to the Sentencing Reform
12:26PM 3 Act of 1984, I am going to sentence you to 180 months to the
12:27PM 4 custody of the Bureau of Prisons. It is my greatest hope that
12:27PM 5 you use those 15 years wisely. And I'll see you on the back
12:27PM 6 end if you don't, but it is my greatest hope that this minimum
12:27PM 7 time is going to make a difference in your life going forward.

12:27PM 8 You are a young man. So it's my hope that when you
12:27PM 9 get out, you will be more mature and you will make that family
12:27PM 10 proud. So I'm going to give you the mandatory minimum for
12:27PM 11 Counts 1, 2, and 3 to be served concurrently.

12:27PM 12 With regard to supervised release on Count 4, I'll
12:27PM 13 impose four years. On Counts 2 and 3, I'll impose three years
12:27PM 14 all to run concurrently.

12:27PM 15 With regard to the fine, you do have kids. You've
12:27PM 16 got child support debts as well, but you are a young man. And
12:27PM 17 one thing I want you to learn is to work in a legal field. So
12:27PM 18 I am going to impose \$500 fine for each count, which would be
12:28PM 19 \$1,500. Counts 1, 2, and 3. I'm going to waive any interest
12:28PM 20 on that fine. I'm going to impose the mandatory special
12:28PM 21 assessment of \$300.

12:28PM 22 I'm going to enter that forfeiture order commensurate
12:28PM 23 here. It will become effective as of the entry of the
12:28PM 24 judgment for the 1575 cash that was found at your home on
12:28PM 25 November 22, 2020.

12:28PM 1 So I believe that gets us to dismissal of the
12:28PM 2 remaining counts. Does the Government so move?

12:28PM 3 MR. HAKES: Yes, Your Honor. Concerning Mr. Booker
12:28PM 4 in all applicable charging instruments, the Government moves
12:28PM 5 to dismiss all remaining charges.

12:28PM 6 THE COURT: Thank you. I will grant that motion and
12:28PM 7 dismiss all remaining counts from the Superseding Indictment,
12:28PM 8 the Second Superseding Indictment, and the Third Superseding
12:29PM 9 Indictment, and specifically really that's that 924(c) in
12:29PM 10 particular. Those are dismissed.

12:29PM 11 Recommendations to the Bureau of Prisons.
12:29PM 12 Ms. Nieuwenhuis, I want to talk to you about this. You've
12:29PM 13 mentioned a few in your sentencing memorandum. You've
12:29PM 14 mentioned one today. And I've learned through my training
12:29PM 15 that the Bureau of Prisons evaluates in order of priority how
12:29PM 16 to meet the needs requested.

12:29PM 17 And so how would you -- you've identified four:
12:29PM 18 Educational and vocational opportunities, close to Grand
12:29PM 19 Rapids. Medical evaluation issues, I think, is a starter kit
12:29PM 20 for everybody, but there are specifics here: Rotten tooth and
12:29PM 21 fluid on the lungs?

12:29PM 22 MS. NIEUWENHUIS: Yes.

12:29PM 23 THE COURT: Okay. And the RDAP program. How would
12:29PM 24 you have me tier those?

12:30PM 25 MS. NIEUWENHUIS: Your Honor, I know that Mr. Booker

12:30PM 1 is very interested in the RDAP program. Because he got the
12:30PM 2 amount of time that he did, that probably would not be
12:30PM 3 happening super fast. I do know that he really would like to
12:30PM 4 be as close to home as possible for visits and such. And then
12:30PM 5 however the Court wants to number them after that would be
12:30PM 6 fine.

12:30PM 7 THE COURT: Okay. All right. Maybe I'll do --

12:30PM 8 MS. NIEUWENHUIS: I think regardless of how the Court
12:30PM 9 would actually list that, I think that they do try to have it
12:30PM 10 where he's as close to possible taking into consideration the
12:30PM 11 recommendations.

12:30PM 12 THE COURT: All right. I'll enter that. Thank you.

12:30PM 13 MS. NIEUWENHUIS: All right. You're welcome.

12:30PM 14 THE COURT: Pursuant to the *United States v. Bostic*
12:30PM 15 case, is counsel satisfied that I've addressed on the record
12:30PM 16 all nonfrivolous arguments asserted?

12:30PM 17 MR. HAKES: Yes, Your Honor.

12:30PM 18 MS. NIEUWENHUIS: Yes, we are, Your Honor.

12:30PM 19 THE COURT: Are there any legal objections to the
12:31PM 20 sentence imposed?

12:31PM 21 MR. HAKES: None from the Government, Your Honor.

12:31PM 22 MR. CELIS: Just a brief note for the record,
12:31PM 23 Your Honor. In our sentencing memo, we raised an objection
12:31PM 24 that we acknowledge have been foreclosed by current Sixth
12:31PM 25 Circuit law, and that's to the 15-year penalty and whether

12:31PM 1 that has to be charged in the Indictment and proven to a jury
12:31PM 2 or by plea.

3 THE COURT: Ah, yes.

12:31PM 4 MR. CELIS: So I just wanted to note that again for
12:31PM 5 the record that it's foreclosed, but we would like to make
12:31PM 6 that objection.

12:31PM 7 THE COURT: I appreciate that. I read that in your
12:31PM 8 brief, and that is preserved. Thank you.

12:31PM 9 All right. Mr. Booker, I'm going to advise you of
12:31PM 10 your appellate rights at this time.

12:31PM 11 Oh, also I submitted for the -- to the Defendant,
12:31PM 12 Mr. Booker, and Ms. Nieuwenhuis an order that lays out the
12:31PM 13 mandatory and special conditions of supervised release, and
12:31PM 14 it's my understanding that that order has been signed.

12:31PM 15 MS. NIEUWENHUIS: That is correct, Your Honor, yes.
12:31PM 16 We did review it, and we both signed.

12:32PM 17 THE COURT: All right. So that will enter as well at
12:32PM 18 the same time as the judgment.

12:32PM 19 MS. NIEUWENHUIS: All right.

12:32PM 20 THE COURT: Mr. Booker, you have a right to appeal if
12:32PM 21 you believe your guilty plea was somehow unlawful or
12:32PM 22 involuntary or if there is some other fundamental defect in
12:32PM 23 the proceeding that's not waived by your guilty plea.

12:32PM 24 You also have a statutory right to appeal your
12:32PM 25 sentence under certain circumstances, particularly if you

1 think the sentence is contrary to law.

12:32PM

2 If you fail to file your notice of appeal within
3 14 days, you may forever lose the right to appeal. So you
4 need to discuss this with defense counsel and let her know
5 immediately if you have any interest in appealing, as that is
6 your responsibility.

12:32PM

12:32PM

7 If you are unable to pay the cost of an appeal, you
8 may file an application for what is known as in forma pauperis
9 in which the fees may be waived. If you wish to do so, with a
10 few exceptions, you need to file the appropriate documents
11 within 14 days of the entry of judgment, which will likely
12 happen today that we'll enter that judgment.

12:32PM

12:32PM

12:32PM

12:32PM

12:32PM

13 Again, talk to Ms. Nieuwenhuis about that. She'll
14 handle all of the filing for you, but you need to let her know
15 what you want. Understood?

12:33PM

16 THE DEFENDANT: Yes, ma'am.

12:33PM

17 THE COURT: Mr. Booker, do you have any questions
18 about anything we talked about today?

12:33PM

12:33PM

19 THE DEFENDANT: No, ma'am.

12:33PM

20 THE COURT: Do you acknowledge that I've provided you
21 with your appellate rights?

12:33PM

12:33PM

22 THE DEFENDANT: Yes, ma'am.

12:33PM

23 THE COURT: Ms. Nieuwenhuis, as I'm required to do, I
24 remind you of your obligation to continue representing
25 Mr. Booker until so released by the Sixth Circuit.

12:33PM

12:33PM

12:33PM 1 MS. NIEUWENHUIS: I understand. And I did want to
12:33PM 2 add for the record that we believe everything has been
12:33PM 3 addressed, and I appreciate Mr. Celis putting that in the
12:33PM 4 record.

12:33PM 5 THE COURT: Thank you.

12:33PM 6 All right. Mr. Booker, I wish you well. I hope that
12:33PM 7 you're able to stay in communication with your family, and
12:33PM 8 that at the end of your sentence the rest of your life will be
12:33PM 9 fulfilling and productive and that I can meet you as a citizen
12:33PM 10 in a different career path for yourself. I'm very hopeful for
12:34PM 11 you to do that.

12:34PM 12 So at this time I'll remand you to the custody of the
12:34PM 13 marshals to begin your sentence. Thank you.

12:34PM 14 That's all for the record.

12:34PM 15 THE CLERK: All rise, please. This court is now
12:34PM 16 adjourned.

12:34PM 17 (At 12:34 p.m., the matter was
18 concluded.)

19

20

21

22

23

24

25

REPORTER'S CERTIFICATE

I, Melinda I. Dexter, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true, and correct transcript of the proceedings had in the within entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction. WITNESS my hand this date, September 19, 2022.



Melinda I. Dexter, CSR-4629, RMR, CRR
U.S. District Official Court Reporter
602 Federal Building
110 Michigan St., NW
Grand Rapids, MI 49503